



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1998

Ms. Abigail Antuna
San Antonio Water System
1001 E. Market Street
San Antonio, Texas 78298-2449

OR98-2202

Dear Ms. Antuna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118352.

The San Antonio Water System received a request for the report concerning a complaint investigation involving the requestor. The requestor also seeks two documents prepared by his supervisor which address his job performance. You claim that the two job performance documents, Exhibits 2 and 3, are excepted from disclosure by section 552.111. You additionally claim that portions of the investigation report, Exhibit 4, are protected from disclosure by section 552.101 under the informer's privilege. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). We have examined Exhibits 2 and 3 and the arguments you make concerning the scope of the documents. The materials at issue, nonetheless, concern administrative and personnel matters of particular employees and specific personnel issues. Consequently, we do not believe that Exhibits 2 and 3 are protected by section 552.111. *Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.--Dallas 1998, pet. requested) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied per curiam, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to the making of new policy but merely implement existing policy)).

You next argue that portions of Exhibit 4, an investigation memorandum dated December 23, 1996, are protected by the informer's privilege. Section 552.101 excepts from

disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). You contend that several employees in this case reported and commented about behavior that was potentially a crime; the incident allegedly involved threats and a physical assault. We do not believe that a communication of the type in Exhibit 4 made to the system is a report of a criminal or civil violation where the system has "a duty of inspection or law enforcement." Exhibit 4 may not be withheld under section 551.101. ORD 279 at 2. The requested records must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118352

Enclosures: Submitted documents

cc: Mr. Lawrence Harrison
San Antonio Water System
1001 E. Market Street
San Antonio, Texas 78298-2449
(w/o enclosures)